IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22397 of 1999

DATED: 06.01.2006

Between:

APSRTC rep by its Depot Manager

Tandur Bus Depot, Ranga Reddy District petitioner

And

M.Krishna Respondent

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 22397 OF 1999

ORAL ORDER:

This writ petition is filed by APSRTC questioning the award passed in I.D. No. 249 of 1996 dated 8.06.1999 by the Labour Court-III, Hyderabad, setting aside the order of removal passed by the petitioner and directing the petitioner to reinstate the respondent into service with continuity of service and with all attendant benefits, but denying him back-wages.

The respondent herein, who was working with the petitioner- Corporation as Cleaner, was issued with a charge sheet dated 7.3.1993. The charge against the respondent reads as under:

> *"For having smuggled out the HSD oil 25 litres from the Vehicle No.AEZ 3295 which was driven by you on*

17.8.1993 when you were booked to attend relief to the Vehicle No.AEX 5463 and sold to Sri Mohd.Khan, resident of Mannegude, which tantamount to serious misconduct in terms of Regulation 28 (x) of APSRTC Employees (Conduct) Regulation 1963."

The respondent submitted his explanation thereto. Being not satisfied with the explanation offered by the respondent, an enquiry was ordered wherein the statements of Superintendent (Mechanical) and Mechanic who accompanied the relief van were recorded on behalf of the management. The statement of the respondent-workman was also recorded and he has not chosen to examine any witness in his defence. The enquiry officer submitted a report holding that the charge leveled against the respondent is proved, and based on the said report, the respondent-workman was removed from service vide proceedings
dt 5.3.1994. The appeal preferred by the respondent-workman was rejected on merits by order dated 14.7.1994. Thereafter, the respondent-workman raised an Industrial Dispute, which was numbered as I.D.
No. 249 of 1996 on the file of the Labour Court-III, Hyderabad.

The Tribunal on consideration of the matter, observed that the petitioner-Corporation failed to prove the charges leveled against the workman and set aside the removal order, and directed the corporation to reinstate the workman into service with continuity of service and attendant benefits. Questioning the said order, the corporation filed the present writ petition on the ground that the Tribunal failed to consider the evidence of Superintendent (Mechanical) and the statement of Mr. Mohd Khan, who purchased diesel from the workman, and erred in ordering reinstatement on the sole ground that the workman was acquitted in the criminal proceedings.

Heard learned Standing Counsel for the petitioner-Corporation and learned counsel for the respondent-workman and perused the material available on record.

The main contention of the petitioner-Corporation is that the Tribunal failed to consider the evidence of Superintendent (Mechanical) and the Mechanic. I am unable to agree with the contention of the petitioner for the reason that the Tribunal has dealt with the evidence of the Superintendent (Mechanical) and observed as follows;

……Now coming to the statement of Superintendent (Mechanical) Tandur, no doubt in his report and also in his statement before the enquiry officer has only stated that the consumption of oil from Tandur to Imliban bus station for to and fro jounerys it will not consume 50 to 60 litres of HSD oil. But it consumed 100 litres of HSD oil, which is more than normal limits of consumption, but except his saying, there is no other record to show that before handing over the service bus from which the theft of oil was said to have been committed by the petitioner. It is necessary to verify how

much oil was supplied to the bus before starting from Tandur bus Depot. Actually before supplying oil to the bus, the respondent definitely maintain account as to the supply of oil. But for the reasons best known the respondent failed to produce any kind of record either before the enquiry officer or before the Court."

The petitioner corporation failed to produce any record indicating the actual quantum of HSD oil supplied to the vehicle in question. The statement of the Superintendent (Mechanical) also does disclose the quantity of oil supplied to the vehicle, but he makes a casual statement that the normal consumption should be about 50 to 60 litres, and the vehicle has consumed 100 litres of HSD oil. In the absence of records and specific statement made with regard to the quantum of HSD oil supplied and the actual consumption, the Tribunal has rightly disbelieved the evidence of Superintendent (Mechanical), and no interference is warranted by this Court in this regard.

Now coming to the second contention of the petitioner-corporation as regards non-consideration of statement of Mr. Mohd Khan, who purchased diesel from the workman, the said person during the course of trial before the Criminal Court has categorically stated that he does not know the workman and he has never purchased any HSD oil from the workman. Hence, the Tribunal has rightly held that the petitioner-Corporation failed to prove the charges leveled against the delinquent employee. The petitioner-Corporation has not made any attempt to examine the said person before the Labour Court to substantiate that the workman has sold HSD oil to the said person. Whereas, the person who traveled along with the workman i.e., the Mechanic is silent about selling of HSD oil to said Mr. Mohd Khan.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of Certiorari are limited to- first to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the fact of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. It is quite clear that the case on hand does not fall under the above parameters. The Tribunal, in the absence of any evidence to connect the petitioner with the alleged charge, has rightly set aside the removal order and directed reinstatement by denying the backwages, and no exception can be taken thereto.

For the foregoing reasons, I see no reason to interfere with the award passed by the Tribunal and to take a different view. There are no merits in the writ petition and the same is liable to be dismissed. Before parting with the case, it is appropriate to observe that in case of misconduct of an employee, the employer shall take necessary steps to gather and produce the relevant record connected with the case and shall take appropriate steps to secure the presence of witnesses in support of its case to establish the charges alleged against the delinquent employee. It is to be noted that in the present case, the officials concerned had not properly conducted

the case in departmental proceedings and even before the Tribunal they had not taken any steps to produce the relevant record. It is hoped that in future the petitioner-Corporation shall take necessary steps to defend their cases properly.

Subject to above observation, the writ petition is dismissed.

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N.V. RAMANA, J.

Dated: 06.01.2006

TVK/NSR

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